



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF KMC DATA,)
LLC FOR AUTHORITY TO PROVIDE LOCAL)
EXCHANGE AND INTEREXCHANGE) ORDER
TELECOMMUNICATIONS SERVICES)
IN THE STATE OF NEW JERSEY)

DOCKET NO. TE01100637

(SERVICE LIST ATTACHED)

BY THE BOARD:

Pursuant to N.J.S.A. 48:2-1 et seq. and Section 253 of the federal Telecommunications Act of 1996, 47 U.S.C. §151 et seq., and by letter dated October 1, 2001, KMC Data LLC ("Petitioner" or "KMC DATA") filed a Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide resold and facilities-based competitive local exchange and interexchange telecommunications services in the State of New Jersey.

KMC DATA is a limited liability company organized under the laws of the State of Delaware. Petitioner's principal offices are located at 1545 Route 206, Suite 300, Bedminster, New Jersey 07921.

Since its recent internal reorganization, KMC DATA is wholly owned by KMC Data Sub Holdings IV LLC, which is wholly owned by KMC Data Holdco Sub LLC, which in turn is wholly owned by KMC Data Holdco LLC, the prior direct owner of the Petitioner. KMC Data Holdco LLC is 100% owned by KMC Telecom Holdings, Inc., the ultimate parent company of KMC DATA and its affiliates. On August 11, 2000, in Docket No. TE00040255, the Board granted authority to KMC Telecom V Inc., one of the indirectly wholly owned subsidiaries of KMC Telecom Holdings, Inc. and affiliate of KMC DATA, to provide resale local exchange and intrastate toll telecommunications service in New Jersey. According to the Petitioner, KMC Telecom Holdings, Inc. is currently seeking approval from the various state commissions in the affected jurisdictions for a series of intra-corporate transactions whereby the operations of four of its wholly owned subsidiaries, KMC Telecom Inc. i.e. KMC I, KMC Telecom II, Inc., KMC Telecom III, Inc. and KMC Telecom IV, Inc. will be consolidated into KMC Telecom III, Inc. in most states. The Petitioner further states that in New Jersey, no such approval is sought, because the affected affiliates do not have a presence in the State of New Jersey.

Petitioner has submitted copies of its Certificate of Incorporation from the State of Delaware and its New Jersey Certificate of Authority to Operate as a Foreign Corporation. According to the Petition, KMC DATA was formed to provide resold and facilities-based competitive local exchange and interexchange telecommunications services throughout New Jersey. Petitioner states that it has authority to provide

telecommunications services in Alabama, Delaware, Iowa, Missouri, Montana, Nebraska, North Carolina (interexchange only), Ohio, Puerto Rico, South Carolina, South Dakota, Virginia (Competitive Local Exchange Carrier ("CLEC") only and unregulated interexchange), Washington, District of Columbia and Wisconsin. In addition, the Petitioner states that its Petition for authority to provide telecommunications service is pending in Alaska, Arkansas, Arizona, California, Colorado, Florida, Hawaii, Idaho, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nevada, New Hampshire, New York, North Carolina (CLEC only), Oregon, Puerto Rico, Rhode Island, Tennessee, Texas and U. S. Virgin Islands (CLEC only). Petitioner states that neither KMC DATA nor its affiliates have been denied authority to provide telecommunications services in any state. Petitioner further states that it has not presently and has not, within the past five (5) years, been under investigation, fined or cited for violation of any consumer protection law or regulation in any state or federal regulatory authority in any jurisdiction.

In its Petition, the Company seeks authority to provide resold and facilities-based competitive local exchange and interexchange telecommunications services throughout the State of New Jersey. The Petitioner states that its services will be comparable to those offered by the Incumbent Local Exchange Carriers (ILEC), Verizon – New Jersey, Inc. as well as those offered by other competitive carriers in New Jersey. Petitioner states that it seeks authority to provide all forms of switched and dedicated telecommunications services, including but not limited to plain old telephone, access, private line and data transmission service. Petitioner further states that it also seeks authority for interexchange telecommunications services like basic 1+ long distance, wide area telecommunications and toll-free telecommunications service. Petitioner states that it anticipates serving only business customers at this time. Petitioner states that it initially plans to deploy Network Equipment Building Standards compliant Media Gateway Controller ("MGC") and Media Gateway ("MG") equipment in non-ILEC collocation space such as carrier hotels for interconnection to ILEC and interexchange service provider. According to the Petitioner, MGC and MG equipment will interconnect with ILEC networks using Inter Machine Trunks at a Point of Presence. Petitioner states that at present it has no switches or other facilities installed in the State of New Jersey. Petitioner further states that its network configuration may change as it continues to install and maintain a technically advanced network, which will allow it to provide the highest levels of reliability, security and capacity that its target customers typically demand. Petitioner states that it has begun researching interconnection opportunities but it has not yet entered into interconnection agreements with any New Jersey carriers. Petitioner states that it will file a tariff for Board approval and that it maintains a toll-free number for its customer service inquiries, which is open 24 hours a day and seven days a week.

Petitioner requests a waiver of N.J.A.C. 14:1-4.3, which require that books and records be maintained in accordance with the Uniform System of Accounts ("USOA"). In the interest of efficiency and to prevent undue burden, Petitioner requests permission to maintain its books and records in accordance with Generally Accepted Accounting Principles. Petitioner also states, upon written notice from the Board and/or Board Staff, it will provide its books and records and will pay any reasonable expenses for examination of the records.

Petitioner asserts that approval of its Petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petitioner also asserts that approval of this Petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings.

With regard to its technical and managerial qualifications, KMC DATA states that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petitioner has submitted the professional biographies of its key personnel who, according to KMC DATA, are well qualified to execute its business plans and have extensive managerial and technical experience in the telecommunications industry.

DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et. seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed KMC DATA's Petition and the information supplied in support thereof, the Board FINDS that the Petitioner is in compliance with the Board's filing requirements which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES the Petitioner to provide local exchange and interexchange telecommunications services throughout New Jersey subject to approval of its tariff. The Board also FINDS that in accordance with N.J.S.A. 48:2-59 and 48:2-60 and N.J.S.A. 52:27E-61 and 52:27E-62, the Petitioner is subject to an annual assessment by both the Board and Division of Ratepayer Advocate, respectively. The Board notes that the Petitioner will not be permitted to provide telecommunications services until a tariff is approved by the Board.

The Board HEREBY ORDERS that:

- 1) Petitioner file its tariff for Board approval.
- 2) Pursuant to N.J.S.A. 48:2-16.3, Petitioner shall file an annual report as of December 31 of each year, which is due on or before March 31 of the following year.
- 3) Pursuant to N.J.S.A. 48:2-59 and 48:2-60, Petitioner shall file a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before June 1 of the following year.

On or before February 1st of each year, the Petitioner will receive from the Division of Audits, an annual report package and a statement of gross intrastate revenues from operations form for the preceding calendar year. The purpose of these documents is to report the company's financial information and gross intrastate revenues from operations as of December 31 of each year. The annual report and a statement of gross intrastate revenues from operations form is due on or before March 31 and June 1 of the following year, respectively. If Petitioner does not receive these documents, it is Petitioner's responsibility to obtain them from the Board. It is also the Petitioner's responsibility to ensure timely filing of these reports.

Regarding the Petitioner's request for waivers of the Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that the Petitioner maintain its books and records in accordance with USOA. Therefore, subject to the Petitioner's continuing responsibility to provide the Board books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES the Petitioner's request for the exemptions from maintaining its books and records in accordance with USOA.

DATED: 10/23/03

BOARD OF PUBLIC UTILITIES
BY:

(SIGNED)

JEANNE M. FOX
PRESIDENT

(SIGNED)

FREDERICK F. BUTLER
COMMISSIONER

(SIGNED)

CAROL J. MURPHY
COMMISSIONER

(SIGNED)

CONNIE O. HUGHES
COMMISSIONER

(SIGNED)

JACK ALTER
COMMISSIONER

ATTEST:

(SIGNED)
KRISTI IZZO
SECRETARY

IN THE MATTER OF THE PETITION OF KMC DATA, LLC FOR
AUTHORITY TO PROVIDE LOCAL EXCHANGE AND
INTEREXCHANGE TELECOMMUNICATIONS
SERVICES THROUGHOUT NEW JERSEY

DOCKET NO. TE01100637

SERVICE LIST

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